

Amendments to the Drawings

The attached four sheets of drawings include changes to FIGS. 1, 2, 3, and 9, respectively. These four sheets each replace the original sheets including FIGS. 1, 2, 3 and 9. Applicant is resubmitting FIGS. 1, 2, 3 and 9 to more clearly illustrate one embodiment depicting how the pair of shelf support members are constructed and arranged for adjustable attachment along the longitudinal length of the upper and lower pair of attachment tubes.

REMARKS/ARGUMENTS

In response to the Office Action of July 06, 2005, Applicants request re-examination and reconsideration of this application for patent pursuant to 35 U.S.C. 132.

Claim Status/Support for amendments

No new matter has been added by the amendments to the drawings made herein.

FIGS. 1, 2, 3 and 9 have been amended to include a plurality of apertures formed within the upper pair of attachment tubes (16, 16') and lower pair of attachment tubes (18, 18') to more clearly illustrate how the pair of shelf support members are constructed and arranged for adjustable attachment along the longitudinal length of the pair attachment tubes so that the shelf support members can be adjusted to support smaller sporting goods (e.g., footballs, softballs, etc.,) or larger sporting goods (e.g., basketballs, volleyballs and the like.)

It is clear from specification, at page 13, lines 2-14, that the shelf supports (24) were originally disclosed as removably attached along the longitudinal length of the upper pair of attachment tubes and lower pair of attachment tubes by any suitable fasteners known for their ease and rapidity of installation and removal, depicted in FIGS. 1, 2, 3 and 9, as originally filed, as

screws (42) and their corresponding apertures.

Claims 1-18 remain pending in the instant application. Claims 1 and 2 have been amended herein.

No new matter has been added by the amendments to the claims made herein.

Claim 1 has been amended to specifically point out the pair of shelf support members being constructed and arranged for adjustable attachment by a suitable fastening means anywhere along the longitudinal length of the pair first attachment tubes, such that the shelf support members can be adjusted to support smaller sporting goods (e.g., footballs, softballs, etc.,) or larger sporting goods (e.g., basketballs, volleyballs and the like.)

Similarly, claim 2 has been amended to define a second pair of shelf support members which extend between a pair of third attachment tubes. The second pair of shelf support member being constructed and arranged for adjustable attachment by a suitable fastening means along the longitudinal length of the pair of third attachment tubes in a generally parallel spaced apart relation to support correspondingly sized sporting equipment thereon.

Support for these amendments can be found throughout the specification as originally filed, see, for example, page 7, lines 19-21; page 13, line 2-14.

Rejections under 35 USC 112, second paragraph

Claims 1-18, as originally presented, stand rejected under 35 USC 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Examiner asserts that the use of the term "upper shelf" is unclear as to meaning. The Examiner suggests amending the claim to replace "upper shelf" with --upper shelf support--.

Claim 1 has been amended herein and does not currently recite "upper shelf". Claim 1, as amended, discloses a first pair of transverse horizontal attachment tubes, each extending between and secured to the forward and rearward corner posts at an upper portion of each side frame and a first pair of shelf support members extending between the pair of first attachment tubes. The pair of shelf support members are able to be readily adjusted, by any suitable fastening means, along the longitudinal length of the first attachment tubes for supporting different sized sporting equipment thereon. Page 7, lines 19-21 and page 13, line 2-14 of the instant specification supports this amendment to the claim.

Applicants have now clarified the metes and bounds of the claims (1-18) and respectfully request that the above-discussed rejection under 35 U.S.C. 112, second paragraph be withdrawn.

Rejection under 35 USC 103(a)

Claims 1-18, as originally presented, stand rejected under 35 USC 103(a) as allegedly being unpatentable over Felsenthal (US Patent No. 6,604,473) in view of Carter, Sr. et al., (US Patent No. 2,478,458).

The Examiner alleges that Falsenthal discloses the device's claimed base seen in Figure 1. It is Applicant's understanding that the teachings of Felsenthal fails to disclose a drawer frame member slidably secured to second attachment tubes.

The Examiner alleges that Carter et al., disclose a drawer frame member (42) secured to attachment tubes (24).

The Examiner then concludes that it would have been obvious to one of ordinary skill in the art at the time the instant invention was made to modify Felsenthal so that the flexible carrier (18, Felsenthal) is slidably supported on the frame as taught by Carter for the purpose of providing easier access to the flexible carriers.

The Examiner further asserts that the number of shelves (for the purpose of holding more articles), the specific means for attaching the flexible carriers to the frame (for the purpose of ease of removal), the manner in which the cross bar members are attached to the frame (rivet, bolt, etc.,) would have been matter of choice of well known expedients in the art equally

interchangeable and mechanically equivalent used and known by the those of ordinary skill in the rack and shelving art. The Examiner also notes the auxiliary brackets (28) for holding various articles and casters (24) in Felsenthal.

Applicants respectfully disagree with the Examiner's determination that the claimed subject matter is obvious.

Claim 1, as currently amended, recites a multi-configurational sports equipment organizer comprising, *inter alia*, a first pair of transverse horizontal attachment tubes, each extending between and secured to the forward and rearward corner posts at an upper portion of each side frame and a first pair of shelf support members extending between the pair of first attachment tubes. The pair of shelf support members being constructed and arranged for adjustable attachment by a fastening means along the longitudinal length of the pair first attachment tubes, wherein the adjustment maintains the pair of shelf support members in a generally parallel spaced apart relation to support correspondingly sized sporting equipment thereon. The organizer includes a second transverse horizontal attachment tube extending between and secured to said forward and rearward corner posts at about a mid portion of the side frames, the second attachment tube adapted for attachment of a drawer frame member. The drawer frame member extending between and slidingly secured to the second attachment tubes and

constructed and arranged to support at least one flexible equipment carrier in an open position. The flexible equipment carrier including a means for attaching it to said drawer frame in an open position.

In order for an Examiner to establish a *prima facie* case of obviousness, three basic criteria must be met (MPEP 2142). First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations.

None of the cited prior art teach or suggest all of the claim limitations, specifically, a pair of adjustable shelf support members that are attached by a fastening means along the longitudinal length of the pair first attachment tubes to support correspondingly sized sporting equipment thereon, as currently recited in the instant claims.

Felsenthal discloses a laundry center which has a plurality of vertical posts connecting together a top storage shelf and a middle snake wire frame. Snap-on connectors are used to secure various items (i.e. wire basket, ironing board) to the vertical posts so

that they may be adjusted up or down by repositioning these plastic connectors over grooves spaced apart along the vertical posts. A plurality of sorting sacks are attached to the middle snake wire frame by ties, plastic or VELCRO.

Carter et al., disclose an apparatus for transporting a large number of pies to and from the baking oven. The invention includes removably support trays (26) fabricated of steel or light weight metals having apertures (36) into which conventional pie pans can be hung. Extending transversely with respect to the wheeled rack and suitably secured to uprights (14), as by welding, riveting or the like, are a plurality of spaced parallel rods, or bars (24) onto which the trays (26) are slidably and removably supported thereon. The primary objective of the invention is to eliminate any unnecessary handling of the pies, which often leads to wasteful breakage and spoilage.

The Examiner asserts that it would have been obvious to modify the laundry center of Felsenthal with the baking transport rack taught by Carter et al., so that easier access would be provided to the flexible carriers (18) of Felsenthal; however, the Examiner does not cite any text of Carter et al. to support the motivation. Why would one of ordinary skill in the art be motivated to combine a removable apertured pie-supporting trays comprising a plurality of pie-shaped apertures in a laundry center? It is never

appropriate to rely solely on "common knowledge" in the art without evidentiary support in the in the record, as the principle evidence upon which a rejection was based. See *Zurko*, 258 F.3d at 1385, 59 USPQ2d at 1697 and *In re Lee* 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002).

Furthermore, how or why would one of ordinary skill in the art attach the steel rod or bars (24) of Carter et al., to the wire middle snake frame (16) or vertical posts (22) of Felsenthal? Felsenthal teaches that the shelving and other attachments are secured by plastic snap-on connectors (26, 35, 49) which allow the plastic connectors to frictionally engage grooves formed in the vertical posts (22) to provided adjustability of height for the various items (e.g. ironing board 38, wire basket 28), see column 3, lines 39-47, Felsenthal. Assuming, *arguendo*, it was possible to weld, or otherwise permanently attach, the rod 24 of Carter et al., to do so would render the Felsenthal unsatisfactory for its intended purpose and change the principle of operations, that being the ability to adjust the attachments along the vertical posts. See MPEP 2143. 01. It is, at best, unclear whether the combination of the steel rod of Carter et al., and the wire middle snake frame (16) or vertical posts will work, hence, no "reasonable" expectation of success.

Thus, one of ordinary skill in the art would not be able to

ascertain any advantages for modifying the teachings and therefore, would not have any reason to be motivated to make these modifications.

Applicants respectfully submit that the Examiner has failed to satisfy all the criteria necessary to establish a proper rejection of claims under 35 USC 103(a); 1) suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or to combine teachings; 2) reasonable expectation of success and 3) the reference or references when combined must teach or suggest all of the claim limitations.

Additionally, a reference used in a rejection under 35 USC 103(a) should be analogous in order to properly establish a *prima facie* case of obviousness. Neither reference (Carter et al. or Felsenthal) are in the field of Applicant's endeavor or reasonably pertinent to the particular problem with which the Applicants were concerned, that is, a storage organizer capable of supporting sports equipment of various sizes. See MPEP 2145 IX and *In re Oeticker*, 977 F.2d 1443, 1446. 24 USPQ 2d 1443, 1445 (Fed. Cir. 1992).

In light of all of the above remarks, Applicants respectfully submit that the Examiner has failed to establish a *prima facie* case of obviousness and further contend that a person of ordinary skill

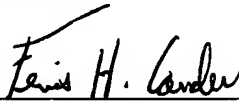
in the art, having the references Felsenthal and Carter et al., in front of him/her would not have the information and motivation necessary to arrive at Applicants' invention.

Accordingly, Applicants respectfully submit that the claimed equipment organizer distinguishes over the prior art and respectfully request that this rejection of claims 1-18 under 35 USC 103(a) now be withdrawn.

CONCLUSION

In light of the foregoing remarks, amendments to the specification and amendments to the claims, it is respectfully submitted that the Examiner will now find the claims of the application allowable. Favorable reconsideration of the application is courteously requested.

Respectfully submitted,



Ferris H. Lander
Registration # 43,377

McHale & Slavin, P.A.
2855 PGA Boulevard
Palm Beach Gardens, FL 33410
(561) 625-6575 (Voice)
(561) 625-6572 (Fax)

\\Ns2\SERVER\CLIENT FILES\1200-1299\1251 - SUNCAST\1251_000212 - UT PAT\Amendments\1251_212_AM1.wpd

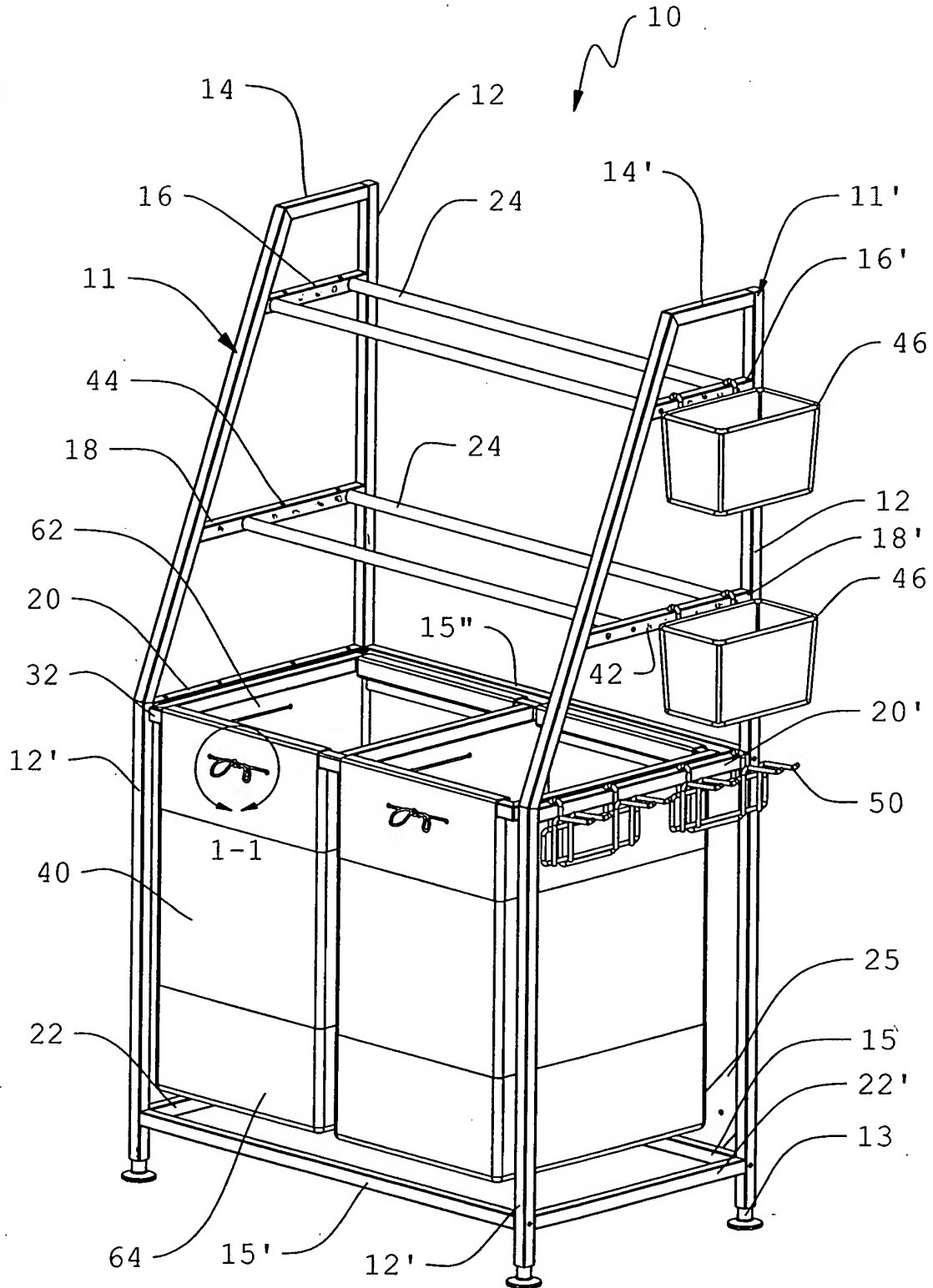


FIGURE 1

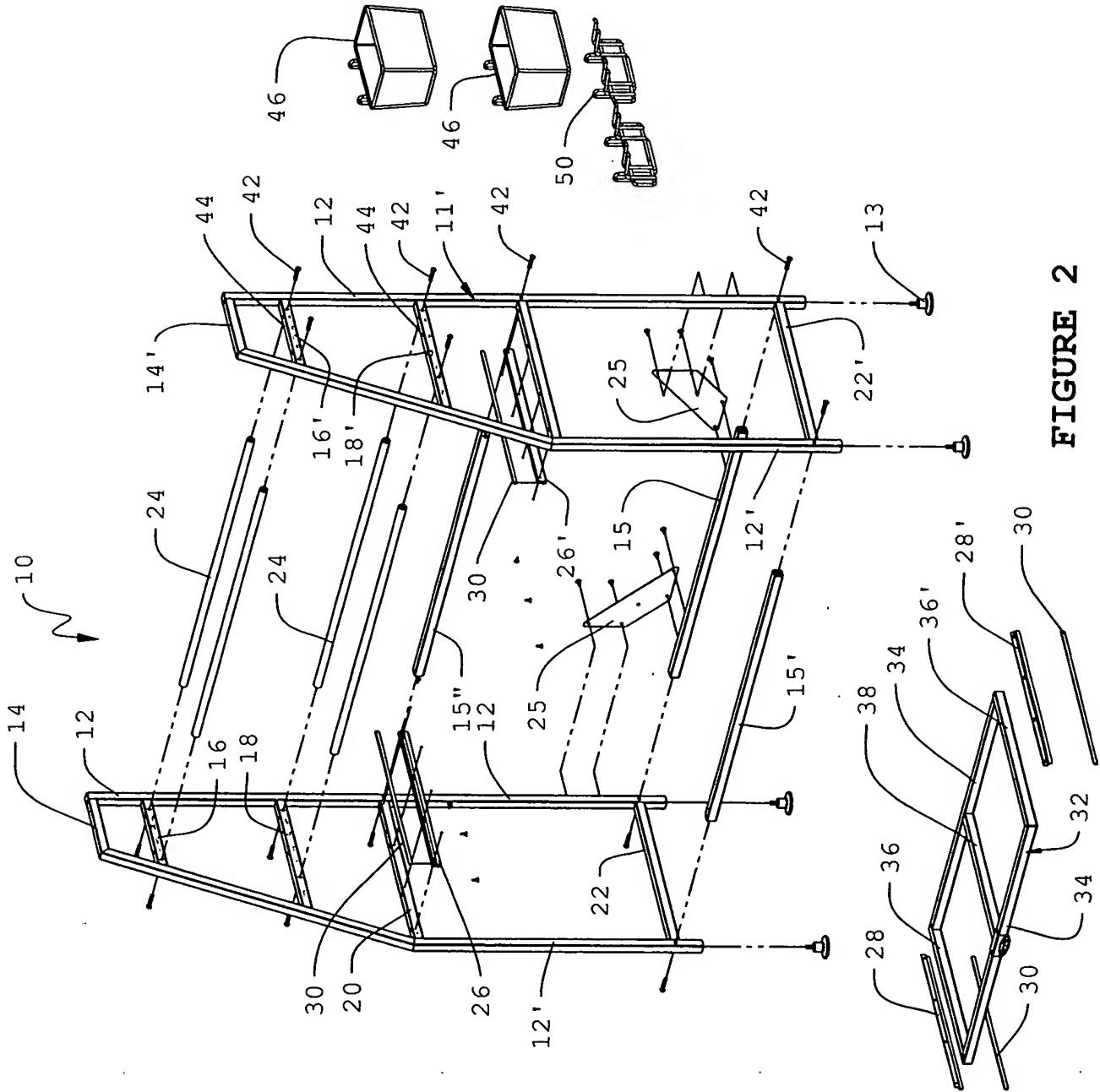


FIGURE 2

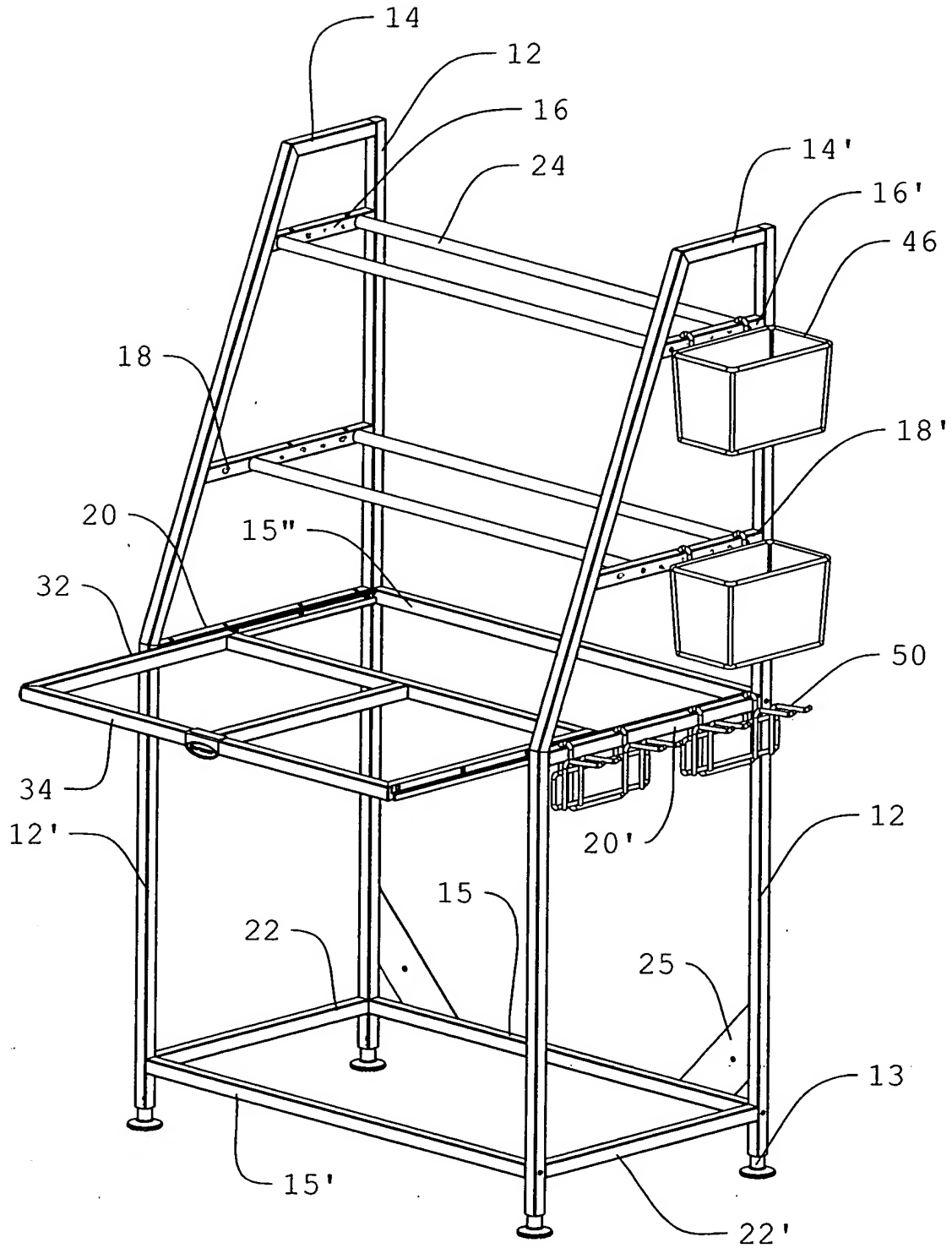


FIGURE 3

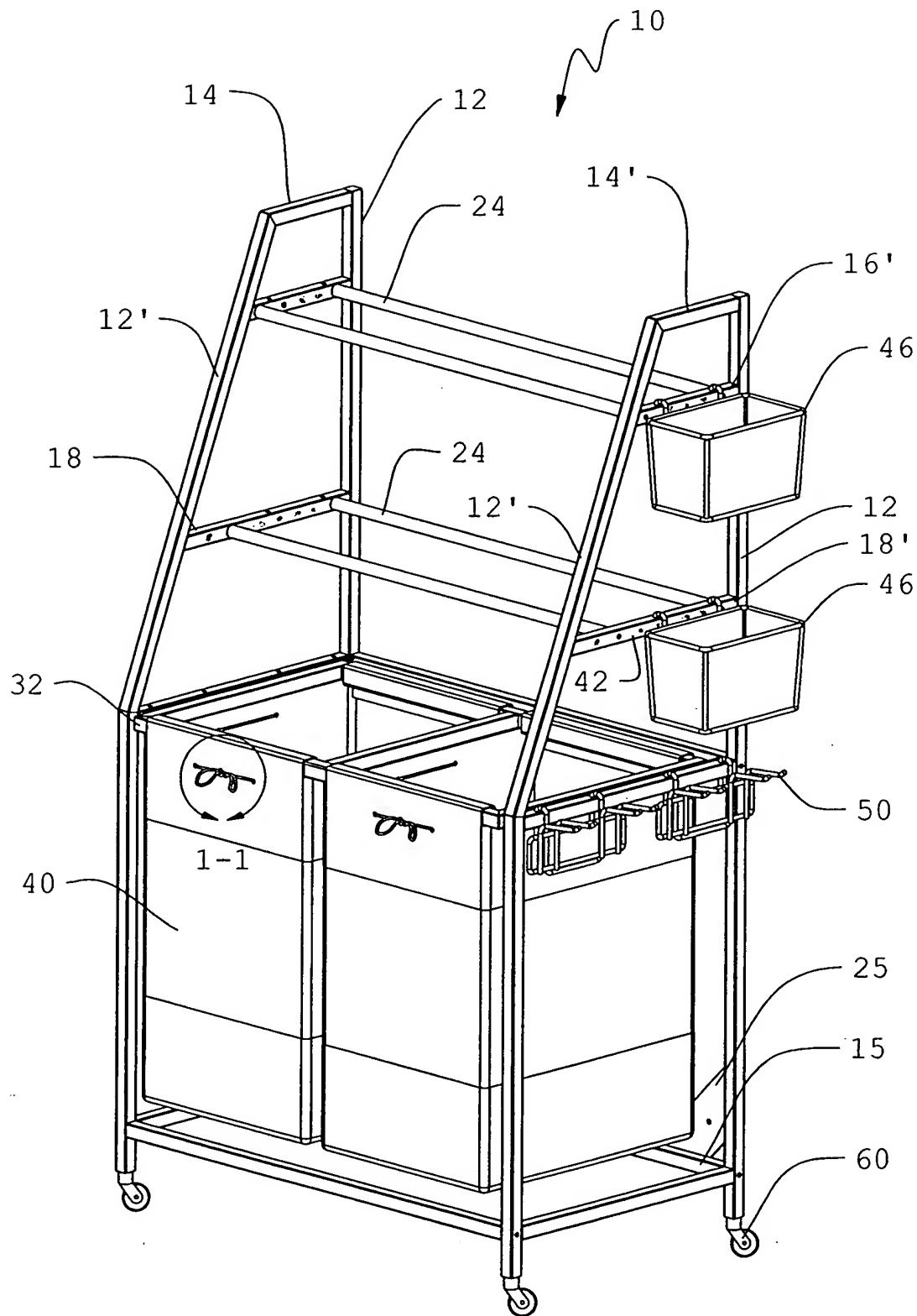


FIGURE 9